

1  
2  
3  
4  
5 UNITED STATES DISTRICT COURT  
6 WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

7 DEMETRIUS TRE WILLIAMS, )  
 )  
8 Plaintiff, ) Case No. C08-1293-MJP-BAT  
 )  
9 v. )  
 ) REPORT AND  
10 CITY OF EVERETT, et al., ) RECOMMENDATION  
 )  
11 Defendants. )  
 )  
12

13 Plaintiff Demetrius Tre Williams is a state prisoner who has submitted a proposed  
14 complaint under 42 U.S.C. § 1983 in which he alleges that his civil rights were violated when he  
15 was arrested without probable cause as a result of racial profiling. Dkt. 1. Plaintiff has also  
16 presented to this Court an application to proceed *in forma pauperis* (“IFP”). Plaintiff names the  
17 City of Everett and Officer Fairchild as defendants in this action. He seeks punitive and  
18 compensatory damages for the defendants’ alleged unlawful actions. Dkt. 1.

19 Plaintiff’s claims are based on the events surrounding his February 11, 2003 arrest.  
20 Proposed Compl., Statement of Facts. Attached to his proposed complaint are the Findings of  
21 Fact and Conclusions of Law in Snohomish County Cause No. 03-1-00829-4, dated July 16, 2004,  
22 detailing plaintiff’s arrest and concluding that the seizure was unconstitutional under both the  
23 federal and state constitutions. Proposed Compl., Ex. State law governs the limitations period for

1 § 1983 actions. *Owens v. Okure*, 488 U.S. 235, 250 (1989). The applicable statute of limitations  
2 for § 1983 actions brought in Washington State is three years. *See* RCW § 4.16.080(2). Plaintiff  
3 filed this complaint on August 28, 2008, more than five years after his arrest, and more than four  
4 years after the Superior Court ruled the arrest unconstitutional. Accordingly, it appears from the  
5 face of his complaint that the statute of limitations bars his claims.

6 Moreover, although plaintiff appears to be indigent, his IFP application faces an additional  
7 obstacle. It appears from court records that plaintiff has on at least three prior occasions had cases  
8 dismissed as frivolous, malicious, or for failure to state a claim upon which relief can be granted.<sup>1</sup>  
9 Under 28 U.S.C. § 1915(g), commonly known as the “three strikes” provision, a prisoner may not  
10 be granted IFP status if he has:

11 on 3 or more occasions, while incarcerated or detained in any facility, brought an  
12 action or appeal in a court of the United States that was dismissed on the grounds  
13 that it is frivolous, malicious, or fails to state a claim upon which relief may be  
14 granted, unless the prisoner is under imminent danger of serious physical injury.

15 28 U.S.C. § 1915(g). Thus, plaintiff’s IFP application must be denied unless plaintiff can show  
16 that he is under imminent danger of serious physical injury.

17 In determining whether § 1915(g) bars plaintiff’s IFP application, the Court must first put  
18 the plaintiff on notice as to the specific cases it considers to be “strikes.” *Andrews v. King*, 398  
19 F.3d 1113, 1120 (9th Cir. 2005). The burden of persuasion then shifts to plaintiff to show that the  
prior dismissals should not qualify as strikes and § 1915(g) does not preclude IFP status. *Id.*

---

20 <sup>1</sup> The Court also notes that, although plaintiff states in his proposed complaint that he has  
21 previously filed 2 lawsuits in any federal court while a prisoner (Proposed Compl. at 1), a review  
22 of this Court’s electronic filing system shows that plaintiff has in fact filed 12 lawsuits in this  
23 Court while a prisoner. These cases are: *Williams v. Williams*, No. C94-5556-FDB-JKA;  
*Williams v. Peterson*, C94-5569-FDB; *Williams v. Johnson*, No. C94-5603; *Williams v. Peterson*,  
No. 94-5644-RJB-JKA; *Williams v. Fraley*, C94-5652-FBD-JKA; *Williams v. Reyes*, No. C97-  
1886-WLD-DEW; *Williams v. Morgan*, C98-5191-FBD; *Williams v. Long*, C98-5314-RJB;  
*Williams v. Snohomish County Corrections*, No. C01-1378-RSL; *Williams v. Cleaven*, No. C04-  
1732-MJP; *Williams v. Kleven*, No. C08-994-JCC; *Williams v. Bannner*, No. C08-1000-RAJ-JPD.

1 The Court hereby provides notice to plaintiff that it considers the following dismissals of  
2 his previous cases to count as strikes under § 1915(g):

3 (A) *Williams v. Peterson*, Case No. C94-5569-FDB. In an order approving and  
4 adopting a report and recommendation, the Honorable Franklin D. Burgess dismissed plaintiff's  
5 complaint as frivolous. Case No. C94-5569-FDB, Dkt. 4.

6 (B) *Williams v. Morgan*, Case No. C98-5191-FDB. In a report and recommendation,  
7 United States Magistrate Judge John L. Weinberg recommended dismissing the action as  
8 frivolous. Case No. C98-5191-FDB, Dkt. 5. Judge Burgess issued an order adopting the report  
9 and recommendation and dismissing plaintiff's complaint under 28 U.S.C. § 1915(e)(2)(B) and 28  
10 U.S.C. § 1915A(b)(1). Case No. C98-5191-FDB, Dkt. 6.

11 (C) *Williams v. Long*, Case No. C98-5314-RJB. In a report and recommendation,  
12 United States Magistrate Judge J. K. Arnold recommended dismissing the action as frivolous.  
13 Case No. C98-5314-RJB, Dkt. 4. The Honorable Robert J. Bryan issued an order adopting the  
14 report and recommendation and dismissing plaintiff's complaint under 28 U.S.C. § 1915(e) and  
15 for failure to prosecute. Case No. C98-5314-RJB, Dkt. 5.

16 Plaintiff appears to have three strikes under § 1915(g) and thus must show that he "is under  
17 imminent danger of serious physical injury." 28 U.S.C. § 1915(g). His complaint, as mentioned,  
18 alleges that his civil rights were violated when he was arrested in 2003 without probable cause as a  
19 result of racial profiling. But it contains no allegations that he is in imminent danger of serious  
20 physical injury.

21 ///

22 ///

23 ///

1 Because it appears that the statute of limitations bars plaintiff's claims and that plaintiff  
2 has three strikes under 28 U.S.C. § 1915(g), the Court recommends that this action be  
3 DISMISSED and that plaintiff's application to proceed *in forma pauperis* be DENIED as moot. A  
4 proposed order accompanies this Report and Recommendation.

5 DATED this 11th day of September, 2008.

6  
7 

8 BRIAN A. TSUCHIDA  
9 United States Magistrate Judge  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23